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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 UNITED STATES OF AMERICA,) No. CR-08-0747 CRB
17 Plaintiff,)
18 v.) [PROPOSED] ORDER OF
19 KAI XIA,) DETENTION
20 Defendant.)

21 **I. INTRODUCTION**

22 A detention hearing in the above-captioned case for defendant Kai Xia was
23 conducted on October 27, 2008. The Court has carefully considered the proffers of the
24 government and the defendant's counsel and the pre-trial services report. The Court finds
25 by a preponderance of the evidence that the defendant poses a risk of flight. The Court
26 finds, for the reasons set forth below, that there are no conditions, or combinations of
27 conditions which could be fashioned in order to assure the appearance of the defendant
28 for trial if he is released. Therefore, for the reasons set forth herein, the Court orders that
the defendant be detained.

1 **II. FACTORS TO CONSIDER UNDER 18 U.S.C. § 3142**

2 **1. Charges and Rebuttable Presumption**

3 On October 23, 2008, the Grand Jury for the Northern District of California
4 returned an indictment charging defendant Kai Xia (“Xia”) with conspiracy to distribute
5 ecstasy in violation of Title 21 U.S.C. § 846. The conspiracy count carries a maximum
6 sentence of twenty years in prison. Therefore, there is a rebuttable presumption that he is
7 both a flight risk and a danger. *See* 18 U.S.C. §3142(e).

8 **2. Defendant’s Travel to Canada**

9 According to proffers by the Government, Xia has traveled to Canada on numerous
10 occasions since 2003 in connection with his ecstasy manufacturing activities. The
11 Government has proffered that the defendant most recently traveled to Canada two weeks
12 prior to his arrest in this case, which occurred on October 10, 2008. Furthermore, the
13 Government has proffered that the defendant was planning to return to Canada in order to
14 assist a Vancouver based ecstasy manufacturing operation. The Court finds that Xia’s
15 frequent travel to Canada demonstrates that he is a serious flight risk if released on bail in
16 this case.

17 **3. Defendant’s Employment History**

18 The defendant has been unemployed for the past year and a half. He also reported
19 being unemployed from 2001-2002. Thus, the pretrial services report reflects an
20 inconsistent history of employment.

21 **III. LEGAL AUTHORITY TO DETAIN THE DEFENDANT**

22 Under the Bail Reform Act, an authorized judicial officer may order the detention
23 or release of a defendant pending trial. A rebuttable presumption of both dangerousness
24 and risk of flight exists when the defendant is charged with a drug felony that carries a
25 maximum term of imprisonment of ten years or more. 18 U.S.C. §3142 (e). Once the
26 defendant produces some evidence to rebut the presumption, the presumption has been
27 rebutted. *United States v. Cook*, 880 F. 2d 1158, 1162 (10th Cir. 1989). However, the
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1 presumption does not disappear, but rather remains as a factor for consideration in the
2 Court's determination. *Id.*

3 The judicial officer may detain a defendant if the Government proves by a
4 preponderance of the evidence that the defendant poses a risk of flight. *United States v.*
5 *Motamedi*, 767 F. 2d 1403, 1407 (9th Cir. 1985), *United States v. Gebro*, 948 F. 2d 1118,
6 1121 (9th Cir. 1991). The preponderance of evidence shows a risk of flight where,
7 among other factors, the weight of the evidence is enough to alert the defendants to a
8 "reasonable possibility of conviction." *United States v. Townsend*, 897 F. 2d 989, 993-94
9 (9th Cir. 1990). A defendant's financial condition and the length of sentence he or she
10 faces are of particular importance in assessing the risk of flight.

11 _____ The judicial officer may also detain a defendant where the Government shows by
12 clear and convincing evidence that no release condition will reasonably assure the safety
13 of the community. Specifically, detention may be ordered where the court finds no
14 condition or combination of conditions could prevent the defendant's continued or future
15 criminal activity. *United States v. Salerno*, 481 U.S. 739 (1987).

16 In assessing danger, physical violence is not the only form of danger contemplated by
17 the statute. Danger to the community can be in the form of continued narcotics activity or
18 even encompass pecuniary or economic harm. *United States v. Reynolds*, 956 F.2d 192
19 (9th Cir. 1992). Propensity to commit crime generally may constitute a sufficient risk of
20 danger to come within the act. See *United States v. Karmann*, 471 F. Supp. 1021, 1022
21 (C.D. Cal 1979).

22 In short, the Government bears the burden of proving by a preponderance of
23 the evidence that the defendant poses a flight risk, or by clear and convincing evidence
24 that the defendant poses a danger to the community. *United States v. Gebro*, 948 F. 2d
25 1118, 1120 (9th Cir. 1991); *United States v. Motamedi*, 767 F. 2d 1403, 1405 (9th Cir.
26 1985).

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1 **IV. CONCLUSION**

2 The Court finds that the defendant has not overcome the rebuttable presumption
3 that he is a flight risk. *See* 18 U.S.C. §3142(e). Given the defendant's frequent travels to
4 Canada for criminal purposes, including travels within the past two months, and the
5 defendant's sporadic employment history, the Court finds by a preponderance of the
6 evidence that no conditions or combination of conditions or release it could fashion
7 would assure the defendant's appearance for trial if he was released. Therefore, the Court
8 ORDERS that the defendant be detained.

9
10 October 27, 2008

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12 HON. JAMES LARSON
13 UNITED STATES MAGISTRATE JUDGE
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